

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL J. WALLACE,

Plaintiff,

vs.

No. C20-799 RSM

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT

LIVE NATION WORLDWIDE, INC., a
Delaware Corporation doing business in
Washington, STARPLEX CORPORATION
d/b/a CROWD MANAGEMENT SERVICES, an
Oregon Corporation doing business in
Washington, and JOHN and JANE DOE
DEFENDANTS 1 through 5,

Defendants.

I. INTRODUCTION

This matter comes before the Court on Defendant Live Nation Worldwide, Inc.’s (“Live Nation”)’s Motion for Summary Judgment. Dkt. #24. Plaintiff Michael Wallace has filed an opposition brief. Dkt. #27. The Court has determined that oral argument is unnecessary, and, for the reasons stated below, GRANTS this Motion.

II. BACKGROUND

On June 29, 2018, Michael Wallace attended a “Dead & Company” concert at the Gorge Amphitheatre Campground (“The Gorge”) in George, Washington. *See* Dkt. #25-1 Ex. A (“Wallace Dep.”), 20:3-21:15. At roughly 3:30 p.m., Mr. Wallace approached a man lying asleep in the grass with a dog lying next to him. *Id.* at 22:2-25. It appeared this man had passed out in a “very uncomfortable” manner rather than intentionally lying down to go to sleep. *Id.* A woman

1 approached and expressed concern for the health of this unconscious man. *Id.* Mr. Wallace agreed
2 to check on him. He saw that there was a dog lying down next to the man, looking around “in a
3 concerned manner.” *Id.* at 23:15-18. This dog was approximately 60 to 70 pounds and “muscular.”
4 *Id.* at 33-16-19. According to Mr. Wallace, the dog was not “aggressively barking” or showing any
5 signs of aggression but was acting “worried” about its owner. *Id.* at 23:19-24.
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7 Mr. Wallace has previously owned several dogs and considers himself “a dog person” who
8 is “a good judge of the demeanor and spirit of a dog.” *Id.* at 37:15-17. His dog has bitten someone
9 before, and he himself has been bitten by a dog, though neither bite was serious. *Id.* at 48:7-25,
10 49:10-19, 50:21-25, 51:1-6.

11 Mr. Wallace states in deposition that he was about eight feet away and slowly approaching
12 the man when the dog “charged and leaped at me.” *Id.* at 24:7-17. Mr. Wallace put up his hands
13 to defend himself and the dog latched onto his right hand and started “chewing and shaking his
14 head... and biting down.” *Id.* at 24:22-25. He pulled his hand “very hard,” separated from the
15 dog, and realized he was bleeding profusely. *Id.* at 25:11-16. He applied pressure to the wound,
16 raised his hand above his head, and people gathered around to help. *Id.* at 25-26. He returned to
17 his car. Eventually a registered nurse applied first aid. *Id.* at 27. Event staff arrived. *Id.* at 28.
18 The police were called to secure the situation, the dog, and the dog owner. *Id.* The police asked
19 the owner to put a muzzle on the dog—the dog had a muzzle on its collar that was not on at the
20 time. *Id.* at 29:3-8. Event staff took Mr. Wallace to the medical tent located at the campground.
21 *Id.* at 30. The tent doctor examined the wound and determined that Mr. Wallace needed to go to
22 the local emergency room. *Id.* What happened next in terms of medical treatment, recovery, and
23 billing is not presented to the Court.
24
25

26 The Gorge Amphitheatre and associated campground are leased and operated by Defendant
27 Live Nation. Dkt. #28-1 (“Wilde Dep.”), 15:17-25. To gain access, concertgoers must pass through
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1 security checkpoints staffed by Defendant Starplex Corporation. *Id.* at 55:5-8. Starplex staff were
 2 instructed in Live Nations’ rules and policies for the venue. Live Nation has a prohibited items
 3 policy, which excludes non-service animals from the campground. Wilde Dep. at 40:10-25. This
 4 policy is communicated to concertgoers via the venue website, social media, email, and signage at
 5 the venue. *Id.* The Gorge campground FAQs, posted online, state:

7 ***“Can I bring my dog?”***

8 “No. Do not bring any pet whatsoever, not because we don’t like
 9 them – we are all animal lovers here – but it is cruel and unfair to
 10 the pet to leave it alone in the campground or parking lot, locked up
 11 or in a car or tent where it may suffer from extreme heat. When we
 12 see a pet in a car or running around the camp ground unattended, we
 13 will alert the authorities and your vehicle may be entered and the pet
 taken to a shelter for its own welfare. You may be subject to
 prosecution for cruelty to animals. Service Animals are permitted
 however.”

14 Dkt #25-1 at 150. Elsewhere on the Gorge website there is a “rule” stating, “[b]esides service
 15 animals, no dogs or pets are allowed in the campground.” Dkt. #28-4. Signage at the venue states
 16 that pets are not allowed but service animals are permitted. Dkt. #28-3.

17 Mr. Wallace now brings this action against Defendants Live Nation and Starplex.
 18 Defendant Live Nation removed to this Court on May 27, 2020, based on diversity jurisdiction.
 19 Dkt. #1. The Amended Complaint alleges Defendants negligently allowed a non-service dog to
 20 pass through security checkpoints and includes causes of action for premises liability and common
 21 law negligence. *Id.* Live Nation moves for summary judgment on all claims, and Starplex has filed
 22 a notice of joinder. Dkts. #24 and #26.

24 **III. DISCUSSION**

25 **A. Legal Standard for Summary Judgment**

26 Summary judgment is appropriate where “the movant shows that there is no genuine
 27 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
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1 Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are those
 2 which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248. In
 3 ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter,
 4 but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d
 5 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d 744,
 6 747 (9th Cir. 1992)).

8 On a motion for summary judgment, the court views the evidence and draws inferences in
 9 the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S. Dep’t*
 10 *of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable inferences in
 11 favor of the non-moving party. *See O’Melveny & Meyers*, 969 F.2d at 747, *rev’d on other grounds*,
 12 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient showing on an
 13 essential element of her case with respect to which she has the burden of proof” to survive summary
 14 judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

16 **B. Common Law Negligence Claim**

17 By statute, dog owners in Washington are strictly liable for dog bites in a public place. *See*
 18 RCW 16.08.040. “The use of the term ‘owner’ evidences a legislative intent to exclude from
 19 liability persons who are mere keepers or possessors of a dog.” *Beeler v. Hickman*, 50 Wn. App.
 20 746, 752, 750 P.2d 1282 (1988). Under state common law, “only the owner, keeper, or harborer of
 21 the dog is liable for [a dog bite].” *Clemmons v. Fidler*, 58 Wn. App. 32, 34, 791 P.2d 257 (1990);
 22 *see also Markwood v. McBroom*, 110 Wn. 208, 211, 188 P. 521 (1920). “Harboring means
 23 protecting, and one who treats a dog as living at his house, and undertakes to control his actions, is
 24 the owner or harborer thereof, as affecting liability for injuries caused by it.” *Markwood*, 110 Wn.
 25 at 211. “The possession of the land on which the animal is kept, even when coupled with permission
 26 given to the third person to keep it thereon, is not enough to make [the land’s] possessor liable as a
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1 harborer of the animal.” *Harris v. Turner*, 1 Wn. App. 1023, 1030, 466 P.2d 202 (1970). In any
2 event, liability is only established where a defendant had “ineffective control of [the dog] in a
3 situation where it would reasonably be expected that injury could occur, and injury does
4 proximately result from the negligence.” *Arnold v. Laird*, 94 Wn.2d 867, 871, 621 P.2d 138 (1980).

5 Live Nation argues Mr. Wallace has failed to present evidence that it owned, kept, or
6 harbored this dog. Dkt. #24 at 9. Mr. Wallace maintains that Live Nation kept or harbored this dog
7 because of its policy to not permit pets at the campground and because “Live Nation claims that
8 [sic] will to take possession of any unattended animals on site and refer matters to Animal Control.”
9 Dkt. #27 at 8. Plaintiff submits no evidence that Defendants, prior to the attack, in fact took any
10 step to take possession of this animal or contact animal control. The use of the term “unattended”
11 for this dog would be a mischaracterization of the record. It is undisputed that concerned onlookers
12 were trying to ascertain the condition of the dog’s owner prior to the attack. It is undisputed that
13 the dog was right next to its owner. There is no evidence to suggest to a reasonable jury that
14 Defendants would have seen this dog and concluded it was unattended prior to the attack.

17 Also absent from the record is any evidence that this dog was in fact a pet rather than a
18 service animal, or that Defendants knowingly allowed a non-service animal to enter the venue or
19 campground, or that they failed to ask the dog owner whether or not this was a service animal.
20 Plaintiff presents no evidence that Defendants knew of this dog’s dangerous propensities prior to
21 the attack.

23 The Court concludes that Defendants were not the owners of this dog. At no point did
24 Defendants take any step to control this animal. Mr. Wallace does not articulate some other basis
25 for Defendants to be liable under common law negligence. Given all of the above, the Court
26 concludes that Mr. Wallace has failed to make a sufficient showing on the above essential elements
27 of his negligence claims. Dismissal of this claim is warranted as a matter of law.

1 C. Premises Liability Claim

2 “A landowner is liable for an invitee’s physical harm caused by a ‘condition on the land’
 3 only if the landowner: (a) knows or by the exercise of reasonable care would discover the condition,
 4 and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should
 5 expect that [invitees] will not discover or realize the danger, or will fail to protect themselves against
 6 it, and (c) fails to exercise reasonable care to protect [invitees] against the danger.” *Oliver v. Cook*,
 7 194 Wn. App. 532, 544 377 P.3d 265 (2016) (quoting *Iwai v. State*, 129 Wn.2d 84, 93-94, 915 P.2d
 8 1089 (1996)); *see also* Rest. (Second) of Torts § 343 (1965).

9
 10 Live Nation cites to the recent Washington Supreme Court case *Blanco v. Sandoval*, which
 11 held there was no basis in that case “to find the dog was a dangerous condition on the land, as
 12 required to establish a duty under Restatement (Second) § 343 or § 342.” 197 Wn.2d 553, 562–63
 13 (2021). That Court stated, “[u]nder our cases, the conditions generally associated with premises
 14 liability duties involve physical features of the property,” found that “petitioner’s reliance on *Oliver*
 15 is unavailing,” and ruled that *Oliver* “is best described as an outlier to the extent some language
 16 suggests the court there considered an animal to be a condition on the land.” *Id.* at 563 (citing
 17 cases).
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19 Mr. Wallace attempts to distinguish *Blanco* by arguing that Defendants in this case “retained
 20 control over the property, including common areas where the subject incident occurred.” Dkt. #27
 21 at 11. The Court agrees that *Blanco* discussed at length the question of the liability of a defendant
 22 landlord who did *not* control the premises, whereas here Live Nation is a tenant who *did* control the
 23 premises. However, this factual distinction is irrelevant if Mr. Wallace cannot demonstrate that the
 24 dog here was a “condition on the land” under Washington law. Viewing the evidence and drawing
 25 inferences in the light most favorable to Mr. Wallace, the Court nonetheless finds that he has failed
 26 to do so. There is nothing in the record to suggest that this dog or that dogs in general were a
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1 physical feature of the property. Instead it is clear that they come and go with their concertgoer
2 owners. The Court, applying Washington state law, will not deviate from the above rulings in
3 *Blanco*. Mr. Wallace has failed to demonstrate an essential element of his claim, and dismissal of
4 this claim is therefore warranted as a matter of law.

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6 **IV. CONCLUSION**

7 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
8 finds and ORDERS that Live Nation's Motion for Summary Judgment, Dkt. #24, is GRANTED.
9 All of Plaintiff's claims are DISMISSED. This case is CLOSED.

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11 DATED this 6th day of August, 2021.

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16 RICARDO S. MARTINEZ
17 CHIEF UNITED STATES DISTRICT JUDGE
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